IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-10-2005

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THE HONOURABLE MR.JUSTICE P.SATHASIVAM

and

THE HONOURABLE MR.JUSTICE S.K.KRISHNAN

W.P.No.4505 of 2003

S. Selvi .. Petitioner

Vs.

1. State of Tamil Nadu,
   represented by the Special Commissioner
   and Secretary to Government,
   Municipal Administration and
   Water Supply Department,
   Fort St. George,
   Chennai - 600 009.

2. The District Collector,
   Kanyakumari District,
   Nagercoil.

3. The Commissioner,
   Munchirai Panchayat Union
   Munchirai,
   Kanyakumari District.

4. Tamil Nadu Administrative Tribunal,
   represented by its Registrar,
   Chennai - 600 104. .. Respondents

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PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the case in O.A.No.6380 of 2002 on the file of the 4th respondent, culminating in its order dated 13.12.2002, quash the same and direct the respondents 1 to 3 to regularise the service of the petitioner as typist in the Munchirai Panchayat Union with effect from 01.01.1993 with all consequential benefits.

For Petitioner : Mr. C. Rajan for Mr.C.Rajkumar

For Respondents : Mr. D. Krishnakumar,
Special Government Pleader
for R1 & R2

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ORDER

(The order of the Court was made by P.Sathasivam.,J)

Aggrieved by the order of the Tamil Nadu Administrative Tribunal, Chennai dated 13.12.2002 made in O.A. No. 6380 of 2002, the petitioner has filed this Writ Petition to quash the same and for direction to the respondents 1 to 3 to regularise her service as typist in the Munchirai Panchayat Union with effect from 01.01.1993 with all consequential benefits.

2. The case of the Petitioner is stated here under: According to the petitioner, she passed S.S.L.C. in the month of October 1987; and Higher Secondary in the month of March 1990. She also passed typewriting course both in English and Tamil in the Senior Grade, conducted by the Additional Director of Technical Education. She originally worked as typist in the third respondent Panchayat Union from 01.01.1993 to 30.06.1996 without any remuneration. There was a regular vacancy for the post of typist in the office of the third respondent, following the retirement of C. Sarojini Ammal on 30.06.1996. The third respondent Panchayat Union, by a resolution No. 29 dated 12.08.1996, appointed her on daily rated basis at Rs.44/- per day initially for 30 days. She continued to work till 13.02.2001. The third respondent by subsequent resolution dated 10.09.1997, resolved to appoint an additional typist and the same has been forwarded to the first respondent. In the meanwhile she also made a representation requesting the respondents to regularise her service. Since she was working with the third respondent panchayat union on daily rated basis, on account of the work load, she is entitled to have her service regularised in consonance with the provisions contained under Industrial Employment and Conferment of Permanent Status Act. Since there was no response, she filed a Original Application before the Tamil Nadu Administrative Tribunal in O.A. No. 6380 of 2002, for a direction to the respondents to regularise her service with effect from 01.01.1993 and for other benefits. The Tribunal dismissed her application, by its order dated 13.12.2002. Hence the present Writ Petition before this court.

3. The second respondent - District Collector, Kanyakumari filed a counter affidavit denying the various averments made in the affidavit. Since a post of typist in the office of the third respondent was vacant, the Union Council, resolved in its resolution No. 206 dated 30.06.1997 to utilise her services to do the urgent typing works till the regular vacancy is filled up by the Government. The resolution of the council makes it very clear that only the Government should fill up the post of Typist on regular basis in the office of the third respondent. The District Collector is the appointing authority for the post of Typist and the Tamilnadu Public Service Commission is the recruiting authority. These facts were not referred to by the petitioner. Only the candidate recruited and allotted by the Tamilnadu Public Service Commission is eligible to be appointed in the said vacancy. The Petitioner was neither issued any appointment order

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nor engaged continuously in the post of typist in the office of the third respondent. Her appointment by the third respondent was not covered by any Service Rules and she is not having any legal right to claim over the post of typist in the office of the third respondent, since the post of typist in the Panchayat Unions is provisionalised with effect from 01.04.1974 for which the Tamilnadu Public Service Commission is the recruiting authority.

4. The Tribunal by the impugned order, after holding that inasmuch as the petitioner's appointment is irregular and approached the Tribunal with a false claim as if she had been working for the past three years without remuneration not supported by documentary evidence, dismissed her application; hence the present Writ Petition.

5. Learned Counsel for the petitioner has brought to our notice the resolutions of the third respondent dated 12.08.1996 and 30.06.1997. It is not in dispute that even if the resolutions carried out by the third respondent are acceptable, it is only for a particular period. The counsel has also brought to our notice a Service Certificate dated 07.07.1997 issued by the Commissioner, Munchirai Panchayat union. No doubt, the said certificate shows that the petitioner by name S.Selvi has worked as typist for the period from 01.01.1993 to 30.06.1996 without remuneration and for the period 01.07.1996 to till date (07.07.1997) as daily wager. Learned Counsel also relied on a Government Order in G.O.Ms.No.125, Municipal Administration and Water Supply Department dated 27.05.1999. We have gone through the resolution Nos.29 & 206 dated 12.08.1996 and 30.06.1997 respectively, service certificate dated 07.07.1997 and G.O.Ms.No.125 dated 27.05.1999. We also considered the stand taken by the District Collector in his counter affidavit dated 24.01.2004. It is the specific stand of the District Collector that the appointment by the Council appointing the petitioner as a typist is only for a limited period and that there is no specific order by the competent authority. According to him, Tamil Nadu Public Service Commission is the recruiting authority and the District Collector is the appointing authority for the post of typist in the Office of the Panchayat unions. He also specifically averred that the Writ Petitioner was neither issued with any appointment order nor engaged continuously in the post of typist in the office of the third respondent, and her engagement by the Panchayat Union Council - third respondent is irregular and without jurisdiction. In the light of the categorical assertion by the District Collector, Kanyakumari at the most, the claim of the petitioner can be accepted to a limited extent that her services were utilised by the Panchayat Union Council for a limited period, that too without a proper order / authority. All these aspects, have been considered by the Tribunal which rightly rejected the claim of the petitioner. No doubt, learned counsel for the petitioner vehemently contended that in view of G.O.Ms.No.125 dated 27.05.1999, the respondents, particularly respondents 2 and 3 ought to have regularised her services and the tribunal also committed an error in not accepting her case. As discussed above, in the light of the specific stand taken by the District Collector, and on going through the Government Order, namely

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G.O.Ms.No.125 dated 27.05.1999, we are unable to accept the claim of the petitioner. Further, there is no specific reference relating to the post of typist in the said Government Order. We have already referred to the assertion of the District Collector that in respect of the post of typist, the appointing authority is the District Collector and the recruiting agency is Tamil Nadu Public Service Commission. In such circumstances, as rightly pointed out by the learned Special Government Pleader for the respondents, there cannot be any mandamus to the respondents 1 to 3 as claimed by the petitioner. We do not find any error or infirmity in the impugned order of the Tribunal; Consequently the Writ Petition fails and the same is dismissed. No Costs.

6. It is made clear that if the petitioner has materials to show that she had worked more than 240 days, it is for her to establish and substantiate the same before the concerned authority.

Sd//
Asst.Registrar

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Sub Asst.Registrar

To

1. The Special Commissioner
   and Secretary to Government,
   State of Tamil Nadu,
   Municipal Administration and
   Water Supply Department,
   Fort St. Goerge,
   Chennai - 600 009.

2. The District Collector,
   Kanyakumari District,
   Nagercoil.

3. The Commissioner,
   Munchirai Panchayat Union
   Munchirai,
   Kanyakumari District.

4. The Registrar,
   Tamil Nadu Administrative Tribunal,
   Chennai - 600 104.

1 cc to Govt. Pleader, SR. 42526
1 cc to Mr.C. Rajkumar, Advocate, SR. 42605

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